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International Convention for the Protection of All Persons from Enforced Disappearance

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Summary record of the 142nd meeting
Held at the Palais des Nations, Geneva, on Tuesday, 8 September 2015, at 3 p.m.

Chairperson: Mr. Decaux

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The meeting was called to order at 3 p.m.

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Montenegro (CED/C/MNE/1; CED/C/MNE/Q/1 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Montenegro took places at the Committee table.*

2. **Mr. Pažin** (Montenegro) said that he welcomed the opportunity to inform the Committee about the legislative and institutional arrangements and mechanisms for providing protection against enforced disappearance that had been put in place in Montenegro since the country's ratification of the Convention in 2011. Under the Constitution, ratification entailed the incorporation of the provisions of the Convention into domestic law in such a manner as to be directly applicable. Where there was a conflict between the Convention and national law, the Convention prevailed. Montenegro had also accepted the individual complaints procedure under article 31, paragraph 1, of the Convention and had recognized the competence of the Committee to receive and consider communications in which a State party claimed that another State party was not fulfilling its obligations under the Convention.

3. Since the country's independence in 2006, the Government had made considerable progress towards reforming the national system for the protection of human rights and fundamental freedoms. Against the backdrop of European and Euro-Atlantic integration, it was harmonizing its domestic law with European law and building regional and international networks to tackle human rights violations, transnational organized crime and the like.

4. In 2012, Montenegro had embarked on talks with the European Union with a view to becoming a full member of that bloc. Negotiations focused on the following conditions for membership: first, further development of the judiciary and fundamental rights and, secondly, justice, freedom and security. The Government was strongly committed to safeguarding the values of the United Nations and fostering bilateral and multilateral relations. It actively cooperated with the Council of Europe and the Organization for Security and Cooperation in Europe in protecting human rights, minority rights and fundamental freedoms and promoting the rule of law and further democratization of society. It was a party to all the major European human rights instruments, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Convention on Compensation of Victims of Violent Crimes, the European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes and others.

5. Human rights and freedoms, including protection against enforced disappearance, were guaranteed under the Constitution, numerous international treaties and the national legislation in force. The guarantees of rights and freedoms provided for under the Constitution were described in detail in the State party's initial report.

6. His Government placed particular emphasis on promoting the rule of law. It was carrying out far-reaching judicial reforms under the Judicial Reform Strategy for the period 2014-2018 and an action plan for the judiciary and fundamental rights in accordance with European Union law. It was in the process of harmonizing key criminal justice legislation with European Union law and introducing institutional changes accordingly, including capacity-building of State prosecutors' offices, the courts, police and other law enforcement authorities. Under the action plan, the two departments of the higher courts responsible for combating organized crime, corruption, terrorism and war crimes would be merged into one special department of the High Court in Podgorica in order to investigate, prosecute and adjudicate on such

cases more effectively. The parliament had passed a law in February 2015 providing for the establishment of the Special State Prosecutor's Office as an independent prosecution authority to combat those types of crime. The Office had the necessary resources and mechanisms at its disposal to investigate all cases of alleged enforced disappearance and was not subject to any restrictions on access to places of detention where disappeared persons might be believed to be held.

7. The Commission on Missing Persons had been set up to look into cases of persons who had gone missing following the armed conflicts in the former Yugoslavia. The Commission was responsible for monitoring the status of cases, putting forward proposals, coordinating the search efforts of competent authorities and organizations, and cooperating with the families and associations of missing persons. It worked with the relevant ministries, professionals and forensic experts and cooperated with international organizations such as the International Commission for Missing Persons and the International Committee of the Red Cross. It also collaborated with its counterparts in the region to help in the identification of victims and the transfer of mortal remains. It kept the families of missing persons informed about the current status of cases, it collected new information about alleged victims' fates and it provided families with financial support. The Commission notified families when the remains of missing persons were found and bore the costs of transportation and burial.

8. The Commission had signed a cooperation agreement in April 2012 with the Commission on Missing Persons of Serbia as part of the effort to mitigate the severe humanitarian consequences of the conflicts in the former Yugoslavia, not least of all by upholding the right of families to know the full truth about their missing relatives. Legal steps were currently being taken to conclude a similar agreement with the Commission on Missing Persons of Kosovo.

9. At a meeting of governmental institutions responsible for handling cases of missing persons in the western Balkans, held in May 2015, the matter of drawing up a joint list of missing persons in the territory of the former Yugoslavia had been discussed and the Government of Montenegro had endorsed such a list. Working in cooperation with its counterparts and associations in neighbouring countries, the Commission had handed over the remains of 14 persons who had been citizens or had been related to citizens of Montenegro at the time of their disappearance. Since July 2014, the remains of three people who had been on neighbouring countries' lists of missing persons and whose families lived in Montenegro had been handed over. Of the persons who had disappeared during the armed conflicts in the former Yugoslavia and were being searched for by the Commission, 61 were Montenegrin citizens or were related to persons who were permanent residents of Montenegro at the time of their reported disappearance: 43 were being searched for in Kosovo, 12 in Bosnia and Herzegovina and 6 in Croatia.

10. The crime of enforced disappearance was punishable under a number of provisions of the Criminal Code, including the article on unlawful deprivation of liberty (art. 162), abduction by force (art. 164), crimes against humanity (art. 427) and war crimes against the civilian population (art. 428). All cases of war crimes that had been brought before the Montenegrin courts had been prosecuted in an independent, impartial and efficient manner. In those cases, the courts had taken the jurisprudence of the International Tribunal for the Former Yugoslavia into account, and the authorities had applied the Geneva Conventions of 1949 and other relevant international agreements during indictment and sentencing proceedings. All victims of war crimes and their families in Montenegro were guaranteed access to justice and adequate compensation and reparation.

11. **Mr. Corcuera Cabezut** said that he was pleased to see such a high-level delegation in attendance. The presence of the Minister of Justice, a justice of the

Supreme Court and other high-ranking officials attested to the importance that the Government attached to the Convention. He also commended the State party on its acceptance of the individual complaint procedure under article 31 of the Convention, which demonstrated its openness to international monitoring. At the same time, he had a number of concerns, some of which had been touched on in the introductory statement. While welcoming the fact that the State party had drafted its initial report in consultation with civil society actors, in particular those working with the judiciary, he wondered why it had not involved others, such as non-governmental human rights organizations or civil society organizations involved in helping the families of victims of enforced disappearance. Why had the Protector of Human Rights and Freedoms (Ombudsman) not been consulted? Referring to paragraphs 3 to 7 of the replies to the list of issues, he asked whether it was indeed true that there was no possibility that the four cases in question had involved enforced disappearance.

12. **Mr. López Ortega**, referring to the reply to paragraph 3 of the list of issues, requested clarification on the number of cases of war crimes and crimes against humanity that had been tried. He would be interested to know why three of the cases mentioned had ended in acquittal. He would welcome further information on why the sentence in the case that had resulted in a conviction had been so light and not commensurate with the gravity of the crime. In the cases that had come before the courts, he wondered whether the chain of command had been followed in order to identify the most senior responsible officials or whether it was lower-ranking officials who had been prosecuted. He invited the delegation to comment on reports that the proceedings had been excessively long and that the standards applied by the domestic courts did not correspond to those applied by the International Tribunal for the Former Yugoslavia.

13. He requested details on the judicial reform that was under way as well as information on the staffing, functions and resources of the Department for the Suppression of Organized Crime, Corruption, Terrorism and War Crimes. Noting that the Department had jurisdiction to investigate and prosecute criminal offences under articles 427 and 428 of the Criminal Code, which covered only the most serious forms of enforced disappearance, he wondered which body would have jurisdiction over the other forms of enforced disappearance that were provided for in article 2 of the Convention and that did not come under those articles as they did not constitute crimes against humanity or war crimes. He wondered whether the State party had received any extradition requests dealing with the crime of enforced disappearance since the entry into force of the Convention or any requests for legal assistance or cooperation from neighbouring States in connection, for example, with the search for disappeared persons or the provision of evidence in cases of enforced disappearance.

14. **Mr. Corcuera Cabezut**, recalling the State party's obligation under article 4 of the Convention, said that he would be interested to hear an explanation of why the State party did not consider it necessary to include in its criminal legislation a provision that defined the crime of enforced disappearance as a specific offence as such. He also wished to know how the authorities of the State party interpreted article 7, paragraph 1, of the Convention, which stipulated that enforced disappearance should be punishable by appropriate penalties which took into account its extreme seriousness.

15. Referring to the provision mentioned in paragraph 18 of the written replies to the effect that persons serving in the army were obliged to execute superior orders except where that would amount to a criminal offence, he wondered whether there were similar provisions applicable to the police and other law enforcement officials.

16. He requested clarification as to whether the concept of an "extended criminal offence" referred to multiple acts rather than to an offence that was continuous in nature. If so, he wondered when the statute of limitations began to run.

17. Referring to paragraph 22 of the written replies, he asked whether there was any other legislation under which victims of enforced disappearance could claim comprehensive reparations rather than simply financial compensation.

18. Noting that Montenegro was a signatory to the Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters, he requested additional information on the scope of the Law on International Assistance in Criminal Matters and asked which provisions would be applicable if a crime for which assistance was required had been committed in a country that was not a party to that Protocol.

19. Referring to the requirement under article 12, paragraph 4, of the Convention that a person suspected of having committed an enforced disappearance should not participate in the investigation into the offence, he requested clarification as to whether the Labour Law, which applied on a subsidiary basis to civil servants, was the only domestic legislation that provided for the suspension from duties of State officials suspected of involvement in an enforced disappearance. He would welcome additional details on the strategy for the investigation of war crimes and protection measures for witnesses. Lastly, he requested further information on the rights that could be suspended during a state of emergency.

20. **Ms. Janina** said that, although the State party was clearly committed to the rule of law and the protection of human rights, it was also necessary to have a domestic legal framework in place to prevent enforced disappearances. She invited the delegation to comment further on the State party's assertion that it did not require legislation that classified enforced disappearance as a specific crime. Stressing the importance of prosecuting cases of enforced disappearance, she requested information on the powers of the newly established Special State Prosecutor's Office and how it was expected to support efforts to combat impunity. She would welcome details on the State party's efforts to make cooperation with neighbouring countries more effective, particularly since the establishment of the Government's Commission on Missing Persons, and on its role in reconciliation initiatives in the region.

21. **Mr. Yakushiji** asked whether the provisions of the Convention relating to such matters as criminal procedure, criminal jurisdiction and extradition could be applied directly in the national courts when they differed from the provisions in national legislation on those matters and, if so, whether there had been any cases in which they had been directly invoked by prosecutors or alleged victims and applied by the courts. He also asked whether articles 162, 164, 427 and 428 of the Criminal Code covered all cases of enforced disappearance defined in article 2 of the Convention. In the absence of an autonomous crime of enforced disappearance in domestic law, he wondered how the State party took into account the three constituent elements of the crime of enforced disappearance defined in article 2 when applying those four articles of the Criminal Code. Noting that imprisonment or abduction without giving information thereon in order to deny legal protection amounted to a crime against humanity and that enforced disappearance was thus covered by the body of criminal offences against humanity, he asked whether the definition of crimes against humanity in the Criminal Code was broader than that in article 5 of the Convention and whether it covered most cases of enforced disappearance. He also asked whether an "extended criminal offence" under article 49 of the Criminal Code needed to be committed by the same offender or if an act of enforced disappearance committed by different offenders also constituted such an offence.

22. **Ms. Galvis Patiño** asked whether there had been any cases in which international treaties to which Montenegro was a party, and specifically the Convention, had been applied directly by the courts because those treaties' provisions dealt with a matter differently than national laws did and, if so, which provisions had been invoked.

23. **Mr. Hazan** said that he would welcome further details on the new Special State Prosecutor's Office, such as the size and composition of its staff. For example, did it include non-legal professionals such as forensic anthropologists? He also wished to know whether the State party had any specific mechanisms for the protection of witnesses or relatives of disappeared persons and whether psychological support was provided to witnesses and other participants in criminal proceedings.

24. **Mr. Huhle** said that criminal offences such as unlawful deprivation of liberty and abduction generally covered only the core elements of the crime but not the many deeds that were necessary for, or at least conducive to, the commission of the crime of enforced disappearance, such as denial of the truth. The Committee was of the view that the Criminal Code should contain a comprehensive definition of enforced disappearance that covered all acts that could be part of that crime.

The meeting was suspended at 4.10 p.m. and resumed at 4.35 p.m.

25. **Mr. Kojović** (Montenegro) said that Montenegro considered the crime of enforced disappearance, as defined in accordance with article 2, paragraph 4, of the Convention, to be covered by the definitions of other offences in the Criminal Code, primarily the unlawful deprivation of liberty, abduction, war crimes against civilians and war crimes against humanity. The Convention had not been invoked in any of the war crime cases heard by the courts, since the acts concerned had been committed prior to ratification of the Convention by Montenegro, but reference had been made to other international instruments.

26. The legislation of Montenegro included a definition of what was characterized as an extended criminal offence, which consisted of several similar offences that belonged to the same temporal continuum, had been committed by the same person and met two of the conditions set out in the corresponding law, such as involving the same injured party and being motivated by the same intent on the part of the perpetrator. The statute of limitations began to run from the moment that the last act forming part of the extended crime had been committed.

27. Montenegro had been the first of the former Yugoslav republics to launch prosecutions for war crimes and the first enforceable judgement in such a case had been issued in 1993. Although there had been six cases of war crimes prosecuted in total, only four had been addressed in the replies to the list of issues. In the Morinj case, the sentences handed down to the defendants had been determined by taking into consideration both mitigating and aggravating circumstances. All prisoners in the case had been identified and their families had been able to contact them. Humanitarian organizations and NGOs had also been permitted contact with the prisoners of war concerned. The Bukovica case had involved arson and was a case of a crime against humanity. The Montenegrin Government had made efforts to restore the houses involved to their previous condition and had launched a public campaign to help all persons who had fled their homes during the war to return to them. The Kaludjerski Laz case involved a crime against the civilian population in which there had been conflict between paramilitary groups and refugees from Kosovo, and all defendants had been acquitted due to a lack of evidence. In the deportation cases, the defendants had been acquitted due to a lack of evidence. Proceedings to determine whether those acquittals had been lawful were pending.

28. The Supreme Court had established a team to provide assistance to witnesses of war crimes, most of whom were from other States, and all witnesses to the war crimes tried in Montenegrin courts had been provided with protection, transport, accommodation, psychological support and medical care and had been informed of their rights during court proceedings. All witnesses had been returned safely to their countries of origin.

29. Within the courts, protection for witnesses included accommodations such as the use of video links for the presentation of evidence. Outside the courts, a special commission had been formed to arrange for the protection of witnesses. It comprised a Supreme Court judge, a representative of the Chief State Prosecutor's Office and a representative of the police. Witness protection measures were the same as those used in other European countries, and procedures for the provision of legal aid had been harmonized across Europe.

30. His country had not been involved in any of the armed conflicts that had taken place in the 1990s, which explained why so few cases involving war crimes had been tried. No person could participate in the investigation of a case in which he or she had a conflict of interest.

31. The trials of all six cases of war crimes had been concluded and binding judgements had been issued. Apparent leniency on the part of the courts was due to the fact that all cases had to be judged solely on the basis of the evidence submitted. Financial compensation could be provided to victims of war crimes only if they had filed the appropriate claims.

32. **Ms. Vukčević** (Montenegro) said that the Special State Prosecutor's Office had taken over many of the responsibilities of the Department for the Suppression of Organized Crime, Corruption, Terrorism and War Crimes in July 2015. The Special State Prosecutor's Office had recruited 8 of the 10 special prosecutors that were to serve on its staff, including its chief special prosecutor, and would include experts in different fields such as finance and information technology. A special investigative team of police officers who would report to the chief special prosecutor was to be set up. The Office would examine reports of war crimes as one way of combating impunity and would work to identify instances in which Montenegrins had possibly been involved in groups that had participated in war crimes. Any suspected war crimes would be prosecuted by special teams, with each team comprising one prosecutor and several police officers. Enforced disappearances, including unlawful deprivation of liberty, that did not constitute war crimes would not be investigated by the Special State Prosecutor's Office, but rather by a different prosecutor's office.

33. The Chief State Prosecutor's Office had begun to engage in international cooperation on war crimes in 2005, when it had signed cooperation protocols and agreements with Bosnia and Herzegovina, Croatia, Kosovo and Serbia. International legal assistance had been provided in many cases and had included the collection of data and evidence for submission to prosecution services in neighbouring countries, the joint identification of potential witnesses and suspects, and arrangements for witnesses to present evidence in Montenegro. In 2010, at the request of the European Union Rule of Law Mission in Kosovo, the courts had investigated reports that a mass grave existed in northern Montenegro, but they had been proven to be unfounded.

34. **Ms. Mašanović** (Montenegro) said that there was a broad framework in place in Montenegro for providing international legal assistance in criminal matters. Such assistance was granted on the basis of the Constitution, bilateral and multilateral agreements and the Law on International Legal Assistance in Criminal Matters. The latter had been adopted in 2008 and provided for reciprocity with respect to the issuance of letters rogatory.

35. In its initial report, the Government's aim had been to inform the Committee about the legislative and institutional framework for the implementation of the Convention in Montenegro and about the work being done by civil society organizations to promote human rights. Representatives of those organizations were involved in many government initiatives, including working groups established to draft laws or key government strategies. Her Government would take the Committee's recommendations fully into account and would ensure that the Protector of Human Rights and Freedoms was involved in its efforts to address the issue of enforced disappearance.

36. **Mr. Djukanović** (Montenegro) said that the Montenegrin Commission on Enforced Disappearances cooperated closely with the International Commission on Missing Persons, the International Committee of the Red Cross and the corresponding commissions in other countries of the region. His Government had already signed a protocol with Serbia and expected to sign one with Kosovo by October 2015. In May 2015, Montenegro had hosted a regional meeting at which the idea of drafting a list of all missing persons in the region had been discussed. Agreements on future cooperation with individual countries had also been reached at that meeting.

37. As stated in a joint declaration signed by the Heads of State of four countries in the region, including the President of Montenegro, efforts would continue to be made to work together to find all persons listed as disappeared. His Government had provided financial and other forms of assistance to families living in Montenegro whose relatives were listed as disappeared in Croatia or Bosnia and Herzegovina, and it stood ready to provide assistance to any State in need.

38. **Mr. López Ortega** said that he wished to thank the delegation for its enlightening responses to the Committee's questions. With regard to the war crimes case in which the accused had not been convicted due to a lack of evidence, it was clear that court cases involving crimes committed long ago or witnesses who lived abroad often resulted in such outcomes. He wished to know from what point in time the statute of limitations began to run in cases where persons deprived of their liberty had never been heard from again.

39. While Montenegro was not the only State party to maintain that enforced disappearance did not need to be classified as a specific offence, that position ran counter to the Committee's interpretation of article 4 of the Convention. It was the Committee's view that article 4 required States parties to adopt a national law setting out a specific definition of enforced disappearance that was in line with article 2 of the Convention. In States where no such definition had been incorporated into national law, the public prosecution service could prosecute a case as an instance of enforced disappearance only if it were part of a widespread or systematic practice, but it was unlikely that modern, democratic countries would experience such situations in the near future. Rather, those countries were more likely to have to deal with isolated cases of enforced disappearance, which nonetheless should be recognized as such. In countries that had not classified enforced disappearance as a specific offence, such disappearances were dealt with as cases of abduction or illegal deprivation of liberty, which failed to take into account the full scope and impact of the offence of enforced disappearance. The instances of extraordinary rendition in Europe following the terrorist attack of 11 September 2001 were one example of cases in which enforced disappearance had been carried out and should have been recognized as such.

40. **Mr. Corcuera Cabezut** said that his understanding of a continuing offence was one that was committed multiple times by the same individual with the same intent. An extended, continuous or permanent offence, on the other hand, was a single offence that continued over a period of time. Enforced disappearance fell into the latter category, which meant that the statute of limitations began to run only when the

person's fate or whereabouts became known. He asked whether Montenegrin law included such a concept. He would also like to know if he had understood correctly that, in one of the cases of enforced disappearance brought before the courts, the court had handed down a lighter sentence as a result of the presence of mitigating circumstances.

41. **Mr. Figallo Rivadeneyra** said that, while it was important to raise awareness of the Convention, the State party should also seek out all possible means of combating impunity. It would be well to conduct a thorough analysis of its Criminal Code, particularly articles 23, 26, 162 and 164, to ensure that it was fully in line with the Convention in terms of such concepts as complicity, instigation and the possible co-involvement of State and non-State actors.

42. **Mr. Kojović** (Montenegro) said that, while article 127 of the Criminal Code stated that, for general criminal offences, the statute of limitations should begin to run from the moment the offence was perpetrated, article 129 of the Code further provided that the prosecution of war crimes and crimes against humanity was not subject to any statute of limitations.

43. Although an individual might commit war crimes day after day on a continuing basis, if each day the person committed a different crime, such as deprivation of liberty one day followed by abduction the next day, then each offence should be dealt with separately, meaning that the situation would not constitute a continuous offence. In accordance with national law, the courts took into account both aggravating and mitigating circumstances. While he did not have information on hand about the details of the case in question, if there had been any mitigating circumstances then they would have been taken into account. Lastly, the Minister of Justice had listened with interest to the Committee's arguments for classifying enforced disappearance as a separate criminal offence and had the power to propose that the Government should heed that recommendation and amend its law. The issue remained open, and the Committee would be informed of any future developments in that regard.

The meeting rose at 5.40 p.m.